

DECISION

Background

- 1 The complainant, Ms P, first made a complaint to the Tolling Customer Ombudsman (TCO) on 18 July 2011, as follows: ¹

"I have an account with Breeze which has 5 tags. As this is a business account, we had 5 tags in total. One of our employees left the company and had forgotten to return the etag. I called Breeze to advise that the license plate was to be removed from the account, and was advised to follow up on having the tag returned. Unfortunately, as ex employees are not very cooperative, I have been unable to have the tag returned. As Breeze has been automatically taking payments from our credit card, our payments were up to date and thought that this was properly arranged, and that this registration would not be billed to our account. As we receive a quarterly bill, I was in shock to find that our ex employee has successfully used a total of \$520.00 worth of trips.

I called Breeze and cancelled the Tag. I discussed this issued with Breeze and asked that they bill the correct vehicle; but unfortunately, they are not willing to credit our account and rebill the correct registration. They explained that once it had been billed to our account there was no changing this. I do believe this is unfair and unacceptable.

Below is a cut and paste of the Breeze email, where they were notified.

Dear [Ms P],

*Your complaint regarding your Breeze account has been received and the reference number is **AS 5******

We can confirm vehicle with licence plate [LPN] was linked to your account on the 01.07.2010 and removed from the account on the 14.02.2011. Our records show the vehicle was removed by an operator in our Contact Centre.

¹ All parties' submissions used in this Decision are quoted verbatim

*Notes on this date the 14.02.2011 state you were advised to keep tag 10101945*** in a safe place if you wished to use the tag in another vehicle in the future. The tolls have been applied to your account as the tag was linked to your account on the dates of travel.*

*As the tolls have been applied to an account we are not able to transfer to another Eastlink account or that of another toll operator and we are not able to credit the tolls incurred by tag 10101945*** in this instance.”*

- 2 The complaint was acknowledged by the TCO and referred to EastLink on 19 July 2011.
- 3 EastLink acknowledged receipt of the complaint on 19 July 2011 and responded to the complainant by email of 25 July 2011, as follows:

“Thank you for allowing us to respond further to your concerns. We can certainly appreciate the unfortunate nature of your situation.

*The information you were provided with by [Name] from our Customer Administration Services department was correct, and no reimbursement will be given for the charges applied to your account for tag: 10101945***. However, we will attempt to explain the reasons for this decision a little further.*

Although it would clearly be beneficial for you, we are unable to pass the tag charges on to your ex-employee. When a tag is detected travelling on EastLink, our toll points do not capture an image of the Licence Plate Number (LPN). This is because our terms and conditions state that an EastLink tag must only be installed in a vehicle which is registered to the same account as the tag. If the terms and conditions are adhered to, there is no need to capture an image when the tag is detected. This means that we have no evidence to prove which vehicle the tag was in during the travel on EastLink and CityLink. Basically, we cannot charge a third party for the tag charges without LPN images as evidence. For this and other reasons, it is our policy not to remove charges from an account and pass them on to a third party, provided the charges were applied to the account according to terms and conditions.

We have listened to a recording of the call on 14th February 2011. Our operator asked if you still had the tag in your possession. When you stated that you believed you did, you were advised a number of times to ensure that you kept the tag safe to prevent unnecessary charges. No charges have been applied to your account after the time when you let us know the tag was no longer in your possession.

Although we cannot assist you any further, there may be other options available to you if you believe you know the identity of the person who has been using the tag. We suggest you take whatever steps you can to recover

the funds directly from your ex-employee. As we can do nothing further regarding the travel which has been charged to your account, we now consider this matter closed.”

4 The complainant replied to EastLink on 25 July 2011, copied to the TCO, as follows:

“Another cut and paste. It was to be expected.

I do believe that if the money was to your benefit, there would be no issue in Eastlink claiming their money with admin fees on top. We have all seen on the news the constant monitoring of the road, and after having the same conversation with Citylink, they have a different opinion. I also know that if I had cancelled the registration I would have expected that this tag should have no billing until I had called and given you a new registration, so as I see it, it is clear who was using the tag. Unfortunately, I didn't pick it up as you take payments automatically and you send an invoice every quarter.

I shall wait for the Ombudsmans reply, as I don't feel this is an acceptable result.”

5 On 27 July 2011 the TCO wrote to the complainant as follows:

“I refer to my email of 19 July 2011 acknowledging receipt of your complaint and our telephone conversation of 26 July 2011. I note that there have been emails between ConnectEast and yourself in relation to your complaint but you are not satisfied with the outcome.

I understand from our conversation that your complaint relates to \$520 in toll fees that were incurred in respect of a vehicle carrying an tag registered in a company name but not attached to a company vehicle. The vehicle was delisted from the company account on 14 February 2011 but you did not have possession of the tag or it had been retained by a former employee. You indicated that this employee may have acknowledged the debt but is unlikely to repay the amount.

I will examine this complaint in the light of the Customer Service Agreement between ConnectEast and yourself after discussions with ConnectEast.

6 The TCO received a copy of EastLink's email to the complainant dated 29 July 2011:

“We deem you to have been sufficiently notified of the potential ramifications of failure to retain possession of your EastLink tag.

In addition to the telephone call on 14th February 2011, the Customer Service Agreement which governs the usage of an EastLink account explains the importance of keeping the tags in your possession, and notifying us if they are lost or stolen.

While it may be 'clear who was using the tag' to you, we cannot pass charges on to a third party based only on an assumption of who was travelling. The holder of the account to which the tag is registered remains responsible for any tag charges until the tag is has been reported lost or stolen to EastLink.

Once you notified EastLink that the tag was no longer in your possession, we were able to prevent any further charges being applied to your account.

*Our position remains unchanged - no reimbursement will be given for the charges applied to your account for tag 10101945***.*

As you are not satisfied with the outcome of your complaint with EastLink, you may engage the Tolling Customer Ombudsman for assistance with your dispute.

We have included Mr Arnold in our final response to you."

7 On the same date, EastLink wrote to the TCO as follows:

*"We have responded fully to the customer who is not accepting the outcome of **no refund will be provided**.*

In summary, the customer contacted EastLink to remove a licence plate number (LPN) on 14/02/11. However she kept the tag, which then was used by an "alleged" third party. Since the travel was billed electronically via the tag being detected, we have no images of the vehicle and have no way of confirming what vehicle travelled. Also, our tolling system is unable to "re-bill" once an account has been charged, be it via LPN or tag travel.

"We have listened to a recording of the call on 14th February 2011. Our operator asked if you still had the tag in your possession. When you stated that you believed you did, you were advised a number of times to ensure that you kept the tag safe to prevent unnecessary charges. No charges have been applied to your account after the time when you let us know the tag was no longer in your possession."

*The account holder is liable for the travel incurred via tag 10101945***. We have suggested that since she alleges to know who travelled, that she contact that party for recovery.*

The customer made a comment about CityLink having a different opinion. I contacted [Name] and explained the case. He confirmed that CityLink operate the same as EastLink and no refund would be provided. Therefore, it is unclear what [Ms P] is referring to."

8 On 1 August 2011 the complainant emailed EastLink, copied to the TCO, as follows:

“As advised by your staff members you also charge for the privilege of cancelling or suspending tags as well. I was advised by your staff member to try and retrieve the device first. For the privilege of cancelling the card what costs might we have incurred for that, as I haven’t received a bill for this either. You have just merely deducted it from my credit card.

And secondly, as a small business this is how I was told to set the account up having this many vehicles. So what do you suggest now, with the tags I have? Do I take them out of the vehicles sit them on my desk to ensure that they are in my possession, as I am responsible for the devices. This you will charge me extra for not having the device, Correct. If a staff member leaves or is terminated whilst I am not here how do you suggest I go about retrieving the tag, once he is gone? If you were an ex-employee would you bring it back? So therefore you charge me again.

I will wait to hear from the Ombudsman thankyou, as I still find your answers to be unreasonable and only to your advantage.”

- 9** The TCO received copy of correspondence from the complainant to EastLink dated 9 August 2011:

*“Please explain this situation. I had tag number 10101944*** in my car on the 10th of May 2011. I called Citylink when I received an account from them for my Registration. I called Citylink and Breeze and advised them that it was to come off our Breeze account, and that tag number. That was going to be arranged.*

*I have now received an Infringement notice 0000939*** which is to the value of \$119.00.*

Now if the case is that I have the tag in my car i should not have received an infringement notice. Correct.

Therefore you need to correct this infringement and correct the issue below.

I have attached a copy of the infringement which wasn’t processed by your tag.”

- 10** To which EastLink responded on the same date as follows:

“Due to the infringement not being in your name, we are unable to provide you, a third party, with information relating to this matter.

However, we can advise the process in which an infringement would have been issued.

- *A licence plate number is detected travelling on EastLink without being registered to a valid tolling account.*

- *A Toll Invoice is then issued to the registered owner of this vehicle.*
- *If the Toll Invoice is not paid, an Overdue Notice is then issued.*
- *If the Overdue Notice is not paid, the travel is referred to enforcement.*

Once travel has been referred to enforcement, the matter is out of the jurisdiction of the toll road operator and you must deal with Civic Compliance Victoria.

If you wish to dispute the issue of an infringement notice, you must submit a written application for internal review to:

Civic Compliance Victoria
GPO Box 1916
Melbourne Vic 3001

Any written correspondence to Civic Compliance Victoria must include the Obligation and Infringement Notice Number/s for any Infringement you would like to dispute.

We have included Mr Arnold in our response to you.”

11 The complainant responded immediately as follows:

“So what you are saying is that the tag I had in my vehicle which I have in my possession will not register a trip?... Because, it is not registered to a tolling account. Correct. This tag you have stated is clearly my responsibility and I chose to take it in my vehicle on the day it was used. A statutory declaration can be provided as my vehicle is registered in my husband’s name.

Covering your third party issue! Contact was made to both city link and breeze to make the arrangement for the transfer of the invoice to my Breeze account. Correct Nothing competed...

So if this is the case please tell me why, when, I have removed a registration (our ex-employee) from this account you have continued to charge it? And why when I have my tag in my possession it is clearly not taken off my account if I have my tag in my possession?

If you read the earlier emails there seem to be a contradiction in your information. This is just one point.

In addition to the telephone call on 14th February 2011, the Customer Service Agreement which governs the usage of an **EastLink account explains the importance of keeping the tags in your possession**, and notifying us if they are lost or stolen.

While it may be ‘clear who was using the tag’ to you, we cannot pass charges on to a third party based only on an assumption of who was travelling. The

holder of the account to which the tag is registered remains responsible for any tag charges until the tag is has been reported lost or stolen to EastLink.

Now you have two issues to deal with.”

12 On the same day, 9 August 2011, the TCO wrote to EastLink as follows:

“I quote below my email of 27 July 2011 to the complainant, which says:

“I refer to my email of 19 July 2011 acknowledging receipt of your complaint and our telephone conversation of 26 July 2001. I note that there have been emails between ConnectEast and yourself in relation to your complaint but you are not satisfied with the outcome.

I understand from our conversation that your complaint relates to \$520 in toll fees that were incurred in respect of a vehicle carrying an tag registered in a company name but not attached to a company vehicle. The vehicle was delisted from the company account on 14 February 2011 but you did not have possession of the tag or it had been retained by a former employee. You indicated that this employee may have acknowledged the debt but is unlikely to repay the amount.

I will examine this complaint in the light of the Customer Service Agreement between ConnectEast and yourself after discussions with ConnectEast.”

Please confirm this is your understanding of the complaint. [Ms P] has indicated to me that she only became aware of the amount owing because she received quarterly accounts. Could you please advise if this is correct, as the Customer Service Account (CSA) indicates that monthly statements are provided.

I note that [Ms P] has subsequently said to you:

“And secondly, as a small business this is how I was told to set the account up having this many vehicles. So what do you suggest now, with the tags I have? Do I take them out of the vehicles sit them on my desk to ensure that they are in my possession, as I am responsible for the devices. This you will charge me extra for not having the device, Correct. If a staff member leaves or is terminated whilst I am not here how do you suggest I go about retrieving the tag, once he is gone? If you were an ex-employee would you bring it back? So therefore you charge me again.”

There is an issue of the clarity in the CSA about a customer’s liability to meet toll fees when an Tag is removed from an account. The complainant has complied, at least in part, with the requirements of the CSA

For example, clause 3.1(c) provides:

“c) You may ask us to add new Tags or Vehicles to your account or remove Tags or Vehicles from your account at any time by notifying us of the Account Details that we need.”

Further, Clause 3.2 provides:

“Changes to Account Details

You must notify us of any change to your Account Details as soon as possible, and not later than 3 business days after the change takes effect. If you don’t notify us of a change in your Account Details, you might not receive important information from us or you might incur additional charges.”

The complainant appears to have complied with the notification requirements. I note clause 4 of the CSA requires that the customer retain possession of Tags at all times but there is a practical difficulty if the Tags are in use in employees’ vehicles. Clause 6.2 provides:

“Travel on EastLink with a Tag Business Account

This clause 6.2 only applies to Tag Business Accounts.

- a) If we detect your Tag travelling on EastLink, we’ll charge your account with the applicable EastLink Toll.
- b) Subject to paragraph (c), if we detect your Vehicle travelling on EastLink but don’t detect your Tag, and the failure to detect your Tag isn’t attributable to our Tolling System or a faulty Tag, we’ll charge your account with the applicable EastLink Tolls plus the Image Processing Fee.
- c) We won’t charge you the Image Processing Fee for any travel on EastLink by your Vehicle from the date of registration of your Vehicle under clause 2.3 until the time you receive your Tag.”

There is a question about a customer’s understanding of liability for toll fees once the Tag has been delisted from the account. A customer giving notice of a change under clause 3.2 could reasonably presume that EastLink is on notice that the customer is not utilising the Tag until it is again listed to the account and that the owner of the vehicle and not the customer would be charged for the vehicle’s subsequent tolls. The identification of the owner of the vehicle would be established in the usual manner applied to vehicles travelling without a Tag.

I understand that the complainant’s situation is unusual and the customer has the responsibility for the Tag, but it does highlight the problem a small business may face with the departure of an employee who then refuses immediately to return a Tag. The Tag is not lost or stolen in such circumstances and the customer would not be likely to report it as such.

The customer has done the correct thing here by notifying EastLink of the changes in the account in the belief the Tag would be returned to EastLink. The customer may have been better advised by ConnectEast to return the Tag pending its future use and if the customer was not able to do so, to immediately report it as being out of the customer’s control. The customer would then have had to pay the appropriate fee but the current situation would have been avoided.

I am seeking your views on the complainant's position."

- 13 The TCO received an email from the complainant dated 29 September 2011:

"Just following up on this attached infringement which was in my car at the time of travel. Breeze tell me that I am responsible for the tag in our ex employees vehicle, then why was this trip not charged to my account when I had another of my tags in my vehicle."

- 14 The TCO emailed the complainant on 30 September 2011:

"I acknowledge receipt of your email below and note its contents.

*From earlier correspondence I understand that you have communicated with [Name] at EastLink in regard to this Infringement Notice 0000939*** and suggest that you await a response from EastLink on this matter prior to referral to the TCO.*

I will make enquiries from EastLink as to the progress of your complaint."

- 15 EastLink responded to the TCO on 30 September 2011 as follows:

"[Ms P] opened a Pre-Paid Tag Account in the company name of [Name] Pty Ltd on 01/07/2010.

*As per the Customer Service Agreement, **3.3 Statements**; EastLink provide quarterly statements. We also advise that customers may view up to date information about amounts credited or charged to their account and copies of previous statements by logging onto our website (and into their account).*

*The Customer Service Agreement, **3.4 Additional statements**, states that customers may ask to receive statements more frequently than quarterly. However, an Additional Statement Fee will be charged to the account for each statement we mail to the customer, in addition to the quarterly statements.*

*On the 14th February 2011, [Ms P] contacted EastLink to remove Licence Plate Number (LPN) [LPN] / VIC from [Name] Pty Ltd tolling account with EastLink. During this call, our operator asked [Ms P] if she still had possession of tag #10101945***. She stated that she believed she did. Our operator advised her several times to ensure the tag is kept safe to prevent unnecessary charges and if she wished to use it in another vehicle in the future. Otherwise there is a \$40 tag replacement fee if the tag is reported lost.*

*As per the Customer Service Agreement **4. Your Tags and licence plates**; it is the responsibility of the account holder to retain possession of allocated tags at all times, as they are liable for any travel detected by the tag(s) "registered" to their tolling account.*

As per the Customer Service Agreement **5. Using EastLink and 6. Using CityLink and other Compatible Toll Roads**; if a tag (registered to an active account) is detected on EastLink, CityLink or another compatible toll road, the account will be charged for that travel.

Due to travel being detected via tag #10101945*** which was still registered to [Ms P's] Pre-Paid Tag Account, travel was billed to her account automatically without any LPN validation being required. Had the tag not been detected, an image of the LPN would have been taken and matched to the either the registered tolling account or owner of the vehicle.

Tag #10101945*** was reported "lost" on 27/04/11. We have waived the \$40 lost tag fee as a gesture of goodwill. Due to the tag not being returned to EastLink, it will continue to be listed on the account but is not active to authorise travel. Should the tag be returned to EastLink, it will then be removed from the list of tags for the applicable account.

There is a distinct difference between a vehicle registered to an account, and a tag registered to an account. [Ms P] is correct in that she did advise EastLink to remove LPN-[LPN] / VIC on 14/02/11. However, as previously stated, [Ms P] believed she still had the tag in her possession. Our operator advised to keep it safe to prevent unnecessary charges. Had she advised EastLink that the tag was no longer in her possession and was not able to retrieve, we would have recommended the tag be reported lost or stolen.

The total travel charges billed including GST to [Ms P's] account from 14/02/11 to 27/04/11 was:

EastLink Travel	\$271.98
CityLink Travel	\$293.85
Total	\$565.83

Therefore, [Ms P] is liable under the Customer Service Agreement for the travel billed to her account via this tag until 27/04/11.

However, we appreciate [Ms P's] circumstances and are prepared to offer a good will credit of \$101.46. This equates to 25% of the total amount billed, \$565.83, less the lost tag fee of \$40.

Please note, while [Ms P's] complaint has been under investigation, we have placed a hold on her account to avoid suspension should the balance no longer be in credit. As of today's date, the account balance is \$144.40 debit. While this complaint is being resolved, [Ms P] should keep her account balance in credit, or discontinue travel to not increase her debt. We request that [Ms P] make payment immediately to her EastLink Tolling Account to bring the balance into credit."

16 The TCO received a further email from EastLink dated 30 September 2011

“[Ms P] has raised 3 issues.

1. 25/07/11 Ombudsman Complaint disputing Tag travel
2. 09/08/11 Infringement issued (to 3rd party). We responded 09/08/11.
 - a. Copy of EastLink reply attached
 - b. Copy of customers response attached
3. 22/08/11 Removal of LPN- [LPN]. We responded 22/08/11
 - a. Copy of EastLink reply attached. Customer did not respond.

We replied to [Ms P’s] email regarding the infringement on 09/08/11. She responded same day. We did not reply again as we were very clear that we were unable to provide her with any information due to the infringement being issued in another person’s name. To prevent breaching the Privacy Act, we provided a generic process of how a trip proceeds to enforcement (infringement.). We also provided instructions on how to dispute an infringement.

The vehicle in question was not linked to an active tolling account at the time of travel on EastLink. Had a tag, linked to an active account AND mounted correctly been detected – then the travel would have been billed to the applicable account. This did not happen, hence the issuing of a Toll Invoice to the registered owner of the vehicle. The Toll Invoice and Overdue Notice went unpaid and proceeded to infringement.

There are not notes confirming anyone contacted EastLink to request the Toll Invoice / Overdue Notice be paid or transferred to any tolling account. The process is to contact EastLink to transfer the Toll Invoice to an active EastLink account or CityLink Account. Since the invoice was issued by EastLink, CityLink would have referred the caller to EastLink to make payment arrangements.

With regards to [Ms P] alleging contradiction in our previous email; the tag being used must be valid (not cancelled due to being lost /stolen), registered to an active account AND be mounted correctly to be detected – and travel billed to an account.

Unless the party who was issued the Toll Invoice / Overdue Notice contacts EastLink and provides consent to discuss their invoice, we will not be discussing anything with [Ms P]. HOWEVER, due to the trip not proceeding to infringement, we would just refer them to Civic Compliance Victoria...”

17 The TCO wrote to the complainant by email dated 11 October 2011:

“I refer to previous correspondence in this matter. EastLink has now responded to me as follows:

"[Ms P] opened a Pre-Paid Tag Account in the company name of [Name] Pty Ltd on 01/07/2010.

As per the Customer Service Agreement, **3.3 Statements**; EastLink provide quarterly statements. We also advise that customers may view up to date information about amounts credited or charged to their account and copies of previous statements by logging onto our website (and into their account).

The Customer Service Agreement, **3.4 Additional statements**, states that customers may ask to receive statements more frequently than quarterly. However, an Additional Statement Fee will be charged to the account for each statement we mail to the customer, in addition to the quarterly statements.

On the 14th February 2011, [Ms P] contacted EastLink to remove Licence Plate Number (LPN) [LPN] / VIC from [Name] Pty Ltd tolling account with EastLink. During this call, our operator asked [Ms P] if she still had possession of tag #10101945***. She stated that she believed she did. Our operator advised her several times to ensure the tag is kept safe to prevent unnecessary charges and if she wished to use it in another vehicle in the future. Otherwise there is a \$40 tag replacement fee if the tag is reported lost.

As per the Customer Service Agreement **4. Your Tags and licence plates**; it is the responsibility of the account holder to retain possession of allocated tags at all times, as they are liable for any travel detected by the tag(s) "registered" to their tolling account.

As per the Customer Service Agreement **5. Using EastLink and 6. Using CityLink and other Compatible Toll Roads**; if a tag (registered to an active account) is detected on EastLink, CityLink or another compatible toll road, the account will be charged for that travel.

Due to travel being detected via tag #10101945*** which was still registered to [Ms P's] Pre-Paid Tag Account, travel was billed to her account automatically without any LPN validation being required. Had the tag not been detected, an image of the LPN would have been taken and matched to the either the registered tolling account or owner of the vehicle.

Tag #10101945*** was reported "lost" on 27/04/11. We have waived the \$40 lost tag fee as a gesture of goodwill. Due to the tag not being returned to EastLink, it will continue to be listed on the account but is not active to authorise travel. Should the tag be returned to EastLink, it will then be removed from the list of tags for the applicable account.

There is a distinct difference between a vehicle registered to an account, and a tag registered to an account. [Ms P] is correct in that she did advise EastLink to remove LPN-[LPN] / VIC on 14/02/11. However, as previously stated, [Ms P] believed she still had the tag in her possession. Our operator advised to keep it safe to prevent unnecessary charges. Had she advised EastLink that the tag was no longer in her possession and was not able to retrieve, we would have recommended the tag be reported lost or stolen.

The total travel charges billed including GST to [Ms P's] account from 14/02/11 to 27/04/11 was:

EastLink Travel	\$271.98
<u>CityLink Travel</u>	<u>\$293.85</u>
Total	\$565.83

Therefore, [Ms P] is liable under the Customer Service Agreement for the travel billed to her account via this tag until 27/04/11.

However, we appreciate [Ms P's] circumstances and are prepared to offer a good will credit of \$101.46. This equates to 25% of the total amount billed, \$565.83, less the lost tag fee of \$40.

Please note, while [Ms P's] complaint has been under investigation, we have placed a hold on her account to avoid suspension should the balance no longer be in credit. As of today's date, the account balance is \$144.40 debit. While this complaint is being resolved, [Ms P] should keep her account balance in credit, or discontinue travel to not increase her debt. We request that [Ms P] make payment immediately to her EastLink Tolling Account to bring the balance into credit."

I wish to point out that EastLink, on its part, has waived the \$40 lost tag fee and offered a credit of \$101.46.

Your comments are sought on the above."

18 The complainant responded on 12 October 2011 as follows:

"It seems to be two separate rules.

I see what they are saying but for your reference, if I am responsible for the tag why is it that when I put this tag in my car which is not a vehicle on the account I received the attached in the mail, which I notified Breeze and they need to sort this one as well as I had this in my car at the time of travel..."

19 The TCO acknowledged receipt of the complainant's email on 21 October 2011 and sought comment from EastLink on the issues raised.

20 EastLink responded to the TCO on 21 November 2011 as follows:

"There is not one single rule which applies to travelling on a toll road. There are a number of rules, outlined in a Customer Service Agreement, which when followed will completely cover a customer for travel.

*In order to be completely covered for travel on a toll road, the **vehicle** must be registered to an active account, and to avoid Image Processing Fees, the tag must be installed (correctly to be detected.)*

Despite this, some people choose to travel without registering their vehicle to their account, hoping that the tag will completely cover them for travel. If the tag is detected, the account is charged for the travel. However, if the tag is not detected, and the vehicle is not registered to the account, a Toll Invoice may be issued. If the Toll Invoice isn't paid, it can end up becoming an Infringement Notice.

*Vehicle [LPN], was not registered to account 100002479*** on 10 May 2011, the date for which the Infringement Notice was issued. If the tag had been detected at every toll point, the account would have been charged accordingly. However, the tag was **not** detected at every toll point, and the vehicle was not registered to the account. This is why a Toll Invoice was issued for this date of travel. Due to this Toll Invoice not being paid, an Infringement Notice was issued.*

We suggest that [Ms P] discuss any matters relating to this Infringement Notice directly with Civic Compliance Victoria, as the matter is now out of our jurisdiction.

*We should also note that EastLink account 100002479*** is currently \$85.07 in debt. We suggest that [Ms P] organise to bring this account into a positive balance immediately to prevent further Toll Invoices being issued. A hold has been placed on account 100002479*** for one week. If this account is not in a credit balance on 28th November 2011, the account may be suspended and further Toll Invoices may be issued.”*

21 This was conveyed to the complainant on 24 November 2011.

22 On 12 December 2011 the complainant responded as follows:

“Eastlink has the rules all worked out to the best advantage to themselves, or a “Quote or rule to cover every way out”.

In my last argument I removed a vehicle registration from our account. Unfortunately, our ex employee still had the tag in his vehicle and was to return it, but didn't, and so accumulated a \$500.00 bill. Eastlink say I was responsible for the tag, and I am responsible for the trips that this vehicle made. To cancel the account was another charge of \$40.00 which I was trying to avoid. Eastlink had access to my credit card then and were happily taking the money they wished until I received a quarterly bill. To my shock?

*After this incident, I assumed that since I am **responsible** as they explained to me on several occasions for my four Eastlink tags, I chose to use one of my tags in my car. My car which is not registered to this account, like the vehicle above (as I removed the registration when the staff member left), I expected my tag to be charged the trip. Not long afterwards I received the toll invoice from Citylink, which I rang Eastlink to bill my account, Eastlink*

obviously didn't arrange it, therefore they have sent it the bill to the Infringement office.

Does this seem one sided to you because it does me. From the looks of things nothing will be sorted and to sort the situation I will changing to Citylink. It seems their main concern is now collecting the outstanding on the account which I hadn't even been notified as yet. I will be forward all our correspondence the the Infringement Office and will try and sort it out with them. Maybe they will have a little more common sense and professionalism.

Many Thanks for trying to help but I think it's a waste of time, trying to sort anything with Eastlink. They have every excuse in the book and will keep cutting and pasting the same answers over and over, as they have been doing. It's a waste of your time and mine as its only going around in circles."

- 23** The TCO sought comment from EastLink, who responded on 10 January 2012 as follows:

"We have responded previously to [Mrs P's] concerns. She is choosing not to accept our responses.

We have applied the goodwill credit offered of \$101.46 to the account. This leaves the account currently in debt \$298.56, with payment require.

We have attached a copy of the last statement issued for usage and payment reference.

As our position remains unchanged, we request that you provide a formal decision to finalise this complaint."

Decision

- 24** The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators and their customers efficiently, fairly and without charge to the customer. In attaining this objective the focus is to look at the issues that are relevant to the resolution of the complaint between the toll road operator and its customer.
- 25** This is done in the context of the circumstances of the complaint, any terms of the use of toll roads and legal requirements. Relevant terms are contained in the customer service agreement, on a toll road operator's website or in other material that is available to customers, whilst legislation such as the Melbourne CityLink Act 1995 can be accessed through Government websites.
- 26** The TCO is not a judicial body and does not have punitive powers. When making a decision it does so on the basis of what it considers fair in the circumstances, taking into account the effect of a decision on each party and any public interest.

- 27** The circumstances of this complaint are set out in detail in the Background to this Decision. It is not intended to reiterate same. The relevant Terms of the Customer Service Agreement have also been set out in the Background.
- 28** Ms P, on behalf of her business, was placed in a difficult situation when an ex-employee did not return a Breeze tag registered in the business name and continued to use the toll roads. It was the responsibility of her business, however, to either:
- (a) have obtained the tag before the relations with the employee were severed; or
 - (b) notified EastLink that the tag was no longer in the possession of the business and paid the lost tag fee.
- 29** If the business had taken either of these two actions the problem with the charges incurred for the use of EastLink would not have occurred. EastLink has not charged Ms P's business toll fees since it was notified of the fact that she no longer had possession of the tag. I am satisfied that the previous charges had been properly made by EastLink and EastLink was in no way responsible for the circumstances in which they were incurred.
- 30** I have noted in my correspondence with EastLink certain extenuating circumstances that may have affected a customer's understanding of the Customer Service Agreement. EastLink has also acknowledged Ms P's situation and made an offer to reduce the amounts of the charges by one-quarter less the lost tag fee, namely \$101.46.
- 31** EastLink has already credited Ms P's business account with this amount. I believe that this was a reasonable approach but I recommend that a further \$23.54 be credited to the account to round out the reduction to her business's liability by \$125.
- 32** Ms P raised a second complaint about charges levied on another vehicle. I am satisfied that EastLink has adequately explained the reason this charge was levied. I am also satisfied that it was made in accordance with the Customer Service Agreement with her business.

Michael Arnold
Tolling Customer Ombudsman

Dated: 7 February 2012